



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME LOCAL 3657 AND
LOCAL 3658

Complainant

v.

CARROLL COUNTY BOARD
OF COMMISSIONERS

Respondent

CASE NO. A-0547:3

DECISION NO. 93-10

APPEARANCES

Representing the Union:

Harriett P. Spencer

Representing the County:

Thomas Flygare, Esq.

Also appearing:

Brenda Presby, Chairman, County Commissioners

BACKGROUND

The two bargaining units which filed unfair labor practices, AFSCME Locals 3657 and 3658, represent certain employees of Carroll County. Specifically, they represent the Carroll County Jail and Mountain View Nursing Home employees. These units were organized and certified in 1990, whereafter the parties executive collective bargaining agreements which expire on March 31, 1993.

In filing its certification petition, the Union indicated

that the budget submission date for the County was March 31. The Board's rules require a public employer to file its budget submission date with the Board which is kept on its public records. The date of March 31 was recorded on those records, although there is nothing in the record which would indicate from whence that date came. Whether it was as a result of the Union's certification petition or whether the County had provided that information to the Board, that date of March 31 was recorded with the Board.

In August of 1992, the County's legal representative filed a letter with the Board dated August 4 and received on August 5, 1992 indicating that pursuant to the rule, the Commissioners were advising the Board that its budget submission date was December 1 as is set forth in RSA 24:21-a.

Thereafter, the Union's representative filed a notice with the Commissioners of a desire to negotiate presuming that such notice exceeded the 120 day pre-budget submission date. The County responded that since the budget submission date was December 1, that the notice was untimely. The Union filed these unfair labor practices. In the interim, between the filing and this hearing, the parties have discussed this matter on several occasions with the County indicating that it was willing to negotiate with respect to cost items and non-cost items providing that the Union entered into certain stipulations including the resolution of a grievance which is now pending and awaiting arbitration.

FINDINGS OF FACT

1. The Carroll County Commission is a public employer, as defined by RSA 273-A:1, of certain employees represented by AFSCME Locals 3657 and 3658.

2. AFSCME Locals 3657 and 3658 are the duly certified bargaining agents of certain employees employed by the Carroll County Commissioners.

3. There are collective bargaining agreements (CBA) which exist between the parties for the period ending March 31, 1993.

4. The Carroll County Commissioners failed to file the appropriate budget submission date with the Board as is required by the Board's rules. That budget submission date was officially listed as March 31 prior to the receipt of Attorney Flygare's letter of August 4, 1992.

5. The County Commissioners, in accordance with the Board's rules, notified the Board that its budget submission date is December 1. The Board also finds that the County did not provide a copy of said notice to the Union.

6. The Union relied on the Board's records, presuming that the information provided was in accordance with the rules and was accurate.

7. The AFSCME Locals filed their notice with the County to renegotiate their CBA at a time which preceded the believed budget submission date by 120 days. Such notice did not precede the December 1 budget submission date by the required 120 days.

8. The Board finds that the notice provided by the County does not meet the requirement of the Board's rule since its filing was within the 120 day required notice period, thus negating the ability of any bargaining agent from having the ability thereafter to file within the appropriate period of time.

9. The County's representatives informed the Union that their notice was untimely and that they were not required to bargain with the union.

10. Discussions have taken place between the parties wherein the Commissioners have suggested that they would be willing to bargain providing the Union met certain demands of the County. The Union has refused to accept the proffered agreements set forth by the County.

DISCUSSION

This case represents an example of great confusion caused by both parties without improper intent or motive.

It is clear to the Board that the Union relied on what it believed to be the budget submission date and that which was found on the public records of the PELRB as required by its rules. The County, for its part, sought to abide by the rules by providing notice of the budget submission date, which is statutorily set. The notice, although precise with respect to the budget submission date, did make it impossible for the Union to file within the appropriate period since its arrival date at the Board on August 5 was on the 117th day preceding the budget submission date. The Board's rule for the jurisdiction to provide its budget submission date annually must be read in the context of the notice requirement and, thus, the filing within the 120 day period cannot be relied upon by the County to bar negotiations.

This is a simple matter of viewing the equities in this current situation. The Commissioners acted in good faith in trying to meet the law and the Union acted in good faith by relying on the Board's rules and the public record generated thereunder. Since it would be unfair to permit either to gain unwarranted advantage by their mutual mistakes and the confusion caused thereby, i.e., the Union's original citation of an

incorrect budget submission date and the failure of the Commissioner's to file the appropriate date in a timely and meaningful way, the Board fails to find the commission of an unfair labor practice by either party. However, the equities dictate that the parties should commence negotiations in accordance with the statute at their very earliest convenience.

DECISION AND ORDER

The Board having considered all the evidence and testimony in this matter finds that it:

A. Dismisses the complaint of unfair labor practices;

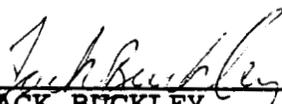
B. Acknowledges that hereinafter December 1 is the budget submission date for Carroll County in accordance with RSA 24:21-a and RSA 273-A:1, III;

C. Orders the parties to commence negotiations pursuant to RSA 273-A;

D. Acknowledges that this order does not obligate the Commissioners to waive the 120 day requirement in future years.

So Ordered.

Signed this 25th day of JANUARY, 1993



JACK BUCKLEY
Alternate Chairman

By Unanimous Vote. Alternate Chairman Jack Buckley presiding. Members Seymour Osman and Richard E. Molan, Esq. present and voting.